U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: FAIRFAX, VA Date: JAN 15 2010

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Certificate of Citizenship (Form N-600) was denied by the District Director, Fairfax, Virginia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the director for action consistent with this decision.

The record reflects that the applicant was born in India on May 30, 1976. *See Birth Certificate for* [redacted]. The applicant's parents were married at the time of her birth. *See Marriage Certificate* (indicating marriage on January 21, 1974). The applicant was admitted to the United States as a lawful permanent resident on September 25, 1980, under Alien Number [redacted] *See Form FS-511, Immigrant Visa and Alien Registration.* The applicant departed from the United States on or around May 11, 1988. *See Form N-600.* The applicant's parents became naturalized U.S. citizens on November 30, 1988, while the applicant was absent from the United States. *See Certificates of Naturalization for* [redacted] *and* [redacted] The applicant returned to the United States on July 13, 1999, and she was admitted as a lawful permanent resident under Alien Number [redacted] *See Optional Form 155B, Immigrant Visa and Alien Registration.* The applicant seeks a certificate of citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, claiming that she derived citizenship through her parents.

The director determined that the applicant did not qualify for citizenship under former section 321 of the Act because she did not reside in the United States when her parents naturalized, or after that time while under the age of 18. *See Decision of the Director*, dated Jul. 17, 2008. The application was denied accordingly. On appeal, the applicant contends through counsel that her absence from the United States was temporary, and that her temporary absence should be construed as constructive presence in the United States. *See Form I-290B, Notice of Appeal*, received Aug. 15, 2008.

The AAO reviews these proceedings de novo. *See* 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.").

Because the applicant was born abroad, she is presumed to be an alien and bears the burden of establishing her claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). Former section 321(a) of the Act provided, in pertinent part:

> A child born outside of the United States of alien parents . . . becomes a citizen of the United States upon fulfillment of the following conditions:
>
> (1) The naturalization of both parents; or
>
> (2) The naturalization of the surviving parent if one of the parents is deceased; or
>
> (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents . . . ; and if

> (4) Such naturalization takes place while such child is under the age of eighteen years; and
>
> (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection . . . or thereafter begins to reside permanently in the United States while under the age of eighteen years.

8 U.S.C. § 1432 (repealed 2000).

The applicant concedes that she was not actually residing in the United States at the time of the naturalization of her parents on November 30, 1988. *See Form N-600*; *Form I-290B*. Specifically, she departed from the United States on or around May 11, 1988, and did not return to the United States until July 13, 1999, when she was 23 years old. *Id.*; *see also Optional Form 155B, Immigrant Visa and Alien Registration.* Despite this absence of over 11 years, counsel contends that the applicant should be deemed constructively present in the United States pursuant to the reasoning set forth in *Matter of D-N-*, 4 I&N Dec. 692 (BIA 1952). This contention lacks merit.

In *Matter of D-N-*, the Board of Immigration Appeals (Board) held that a child may be regarded as constructively residing in the United States during an absence from the country if the absence is found to be temporary in nature. *Id.* at 693-94 (finding applicant's five-year absence to be temporary where he remained abroad due to conditions beyond his control; had a fixed intention at all times to return to the United States; returned to the United States as soon as he could; and his course of conduct abroad was consistent with a desire to return to the United States). Here, the applicant departed from the United States and returned to Kerala, India, where she was engaged in a course of study. *See Application for Immigrant Visa and Alien Registration*, dated Apr. 5, 1999. Nothing in the record indicates that the applicant's departure was intended to be temporary. *Cf. Matter of D-N-*, 4 I&N Dec. at 693-94.

A person may obtain citizenship only in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 884 (1988). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect," and that any doubts concerning citizenship are to be resolved in favor of the United States. *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967); *see also* 8 C.F.R. § 341.2(c) ("The burden of proof shall be upon the claimant . . . to establish the claimed citizenship by a preponderance of the evidence."). Here, the applicant has not met her burden of showing that she meets the requirements of former section 321(a)(5) of the Act.

The AAO notes that the record contains a copy of the applicant's U.S. passport. In *Matter of Villanueva,* 19 I&N Dec. 101, 103 (BIA 1984), the Board held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, the Board held that:

> unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

Id. Where, as here, the applicant has failed to establish statutory eligibility for U.S. citizenship, a Certificate of Citizenship cannot be issued. The U.S. Citizenship and Immigration Service's (USCIS) Adjudicator's Field Manual at § 71.1(e) instructs:

> An unexpired United States passport issued for 5 or 10 years is now considered prima facie evidence of U.S. citizenship. Because it does not provide the actual basis upon which citizenship was acquired or derived, the submission of additional documentation may be required or the passport file may be requested. If after review there are differences or discrepancies between the USCIS information and the Passport Office records which would indicate that the application should not be approved, no action should be taken until the Passport Office has an opportunity to review and decide whether to revoke the passport.

The matter must therefore be remanded to the director to request that the Passport Office review and decide whether to revoke the applicant's passport. The director shall issue a new decision once the Passport Office's review is completed and, if adverse to the applicant, shall certify the decision to the AAO for review.

ORDER: The matter is remanded to the director for action consistent with this decision and for issuance of a new decision, which, if adverse to the applicant, shall be certified to the Administrative Appeals Office for review.